

DEPARTMENT OF ENVIRONMENTAL QUALITY

Legislation modifying the Solid Waste Management Act  
By Request of the Department of Environmental Quality  
**2007 MONTANA LEGISLATURE**

**HB88 FACT SHEET**

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REMOVE SOLID WASTE EXEMPTION FOR ELECTRICAL GENERATING FACILITIES; REQUIRE OBTAINING A SOLID WASTE PERMIT FOR DISPOSAL OF COAL COMBUSTION WASTE.

**Statute:** Amending Sections 75-10-214, MCA

**Summary:** The Solid Waste Management Act (SWMA) has a provision that exempts certain types of business or industry from the permitting and regulatory requirements contained within the act. 75-10-214, MCA, states:

*"(1) (a) This part may not be construed to prohibit a person from disposing of his own solid waste that is generated in reasonable association with his household or agricultural operations upon land owned or leased by that person or covered by easement or permit as long as the disposal does not create a nuisance or public health hazard or violate the laws governing the disposal of hazardous or deleterious substances.*

*(b) This part does not apply to the operation of an electric generating facility, to the drilling, production, or refining of natural gas or petroleum, or to the operation of a mine, mill, smelter, or electrolytic reduction facility.*

This proposed statutory change would remove the exemption for electrical generating facilities that treat, store and dispose of combustion waste (primarily coal ash). Electrical generating facilities would henceforth work with the agency to properly locate and operate ash disposal in Montana.

**Background:** During the 1991 legislative session, HB660 modified those entities identified in Montana Code Annotated 75-10-214 that were regulated under the Montana Solid Waste Management Act. Solid wastes generated at electrical generating facilities were excluded from landfill licensing requirements based upon existing regulatory requirements promulgated under the Major Facilities Siting Act (MFSA). During the 2001 legislature, power plant wastes were excluded from MFSA thereby removing the state's authority to manage disposal of these wastes at a power generation facility.

In May of 2000 the Environmental Protection Agency (EPA) published a Notice of Regulatory Determination on Wastes from the Combustion of Fossil Fuels. In the Notice, EPA determined that regulating Coal Combustion Wastes (CCW) as hazardous waste is not warranted. However, the EPA decided that it is appropriate to establish national regulations under solid waste authorities for coal combustion wastes that are disposed in landfills and surface impoundments. The EPA concluded that solid waste regulations promulgated as Subtitle D of the Resource Conservation and Recovery Act (RCRA) are the most appropriate mechanism for ensuring that the CCW are managed safely.

EPA's conclusion was based on several factors:

- Comparisons of drinking water and other appropriate standards to leach test data from coal combustion waste samples, which identified possible exceedence of arsenic MCLs (Maximum Concentration Limits).
- Evidence of actual and potential environmental releases of metals (cadmium, chromium, lead) from CCW.
- Significant number of damage cases.
- Ecological risks at impoundments to amphibians, mammals, and birds.
- Large volumes of CCW that are generated.
- Proportion of existing and newer CCW management units that do not currently have basic controls (liners, groundwater monitoring) in place.
- The presence of hazardous constituents in CCW.
- Future EPA regulations for coal burning utilities could cause a 2 to 3 fold increase in coal ash mercury levels, as well as other metals.

The department is authorized by the EPA to administer solid waste regulations based upon the fact the Montana Solid Waste Management Act mirrors RCRA Subtitle D regulations. The department has the staff resources to license and regulate facilities constructed for the disposal of wastes from electrical generation. Additional workload to regulate coal ash would be paid for by application review and annual license fees. This legislation would not create additional FTEs.

**Issue:** The Montana DEQ lacks the statutory authority to work with electrical generating facilities to manage their waste streams in a manner protective to human health and the environment for present and future generations. The EPA has stated that they intend to publish a "Notice of Data Availability" (NODA) in the spring of 2007. The NODA contains studies that justify impending federal regulations. The federal register notice with EPA's CCW regulations will be published about November, 2007. We believe it in Montana's best interest to demonstrate the ability to oversee coal combustion waste management as opposed to federal regulations. In Montana, "ash" is already defined and regulated as a solid waste. The regulations promote recycling and alternatives to disposal; however, given the high volume of coal ash produced by electrical generating facilities, planning for proper disposal should take place. Administrative Rules of Montana to specify technical and operational criteria for coal combustion waste monofills have been drafted and reviewed by stakeholders.

**Regulated Community:** Electrical generating facilities that dispose of coal combustion waste on site and, or, enterprises that receive coal combustion waste for disposal. Stakeholder group participants have met twice to discuss the legislation and to discuss draft rules to implement the legislation. Although this proposal failed during the 2005 session, it is worth noting that two proposed power plants see the importance and have approached the agency to address their coal ash waste. Southern Montana Electric's on-site depository at the proposed Highwood Plant is included in their draft EIS currently out for public comment. Rocky Mountain Power at Hardin elected to haul their ash to an existing licensed facility operated by Big Horn County but is putting together a CCW monofill proposal.